

DEPARTMENT OF STATE REVENUE

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**LETTER OF FINDINGS NUMBER: 97-0371 ST
SALES AND USE TAX
FOR THE YEAR 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax - Aircraft used in agricultural operation.

Authority: IC 6-2.5-5-2; 45 IAC 2.2-5-6; 14 CFR § 137.3; 14 CFR § 137.11

STATEMENT OF FACTS

The taxpayer is an agricultural partnership. In September of 1996, the taxpayer purchased a RANS S-12 Airaile experimental aircraft kit. The Department notified the taxpayer of its obligation to register the aircraft, pay excise tax and use tax to the State of Indiana. The taxpayer registered and paid the excise tax, but seeks an agricultural exemption from use tax. The taxpayer's partner (hereinafter "pilot") first stated that he intended to use the aircraft for aerial crop surveillance and image capture in order to diagnose crop infestations and problems. (Taxpayer letter, June 13, 1997). The Protest Review section denied the taxpayer's exemption on the basis that the property was not "[d]irectly used in the direct production...of agricultural commodities..." in accord with 45 IAC 2.2-5-6. (Department letter, June 13, 1997). The taxpayer followed up this letter with a new use for the aircraft in question. This time, the taxpayer determined that the use the aircraft would be for aerial applications of pesticides and fertilizers. (Taxpayer letter, July 21, 1997).

As noted before, the aircraft is a non-production and experimental model. From the time of purchase to the present, the pilot has been building and testing the aircraft. Experimental type aircraft are strongly regulated by the Federal Aviation Administration (FAA). At the time of hearing, the taxpayer's aircraft was still in probationary flight test status. Aircraft within this status must follow strict operational limitations that are established by the FAA. For example, the pilot is not allowed to operate the aircraft outside of a twenty-five (25) mile radius of the taxpayer's home location during the first twenty-five (25) hours of flight. (FAA operating limitations for Amateur-Built Aircraft). Even when the aircraft does graduate from this stage it will still be heavily restricted by its operational limitations.

I. Sales/Use Tax - Agricultural exemption

DISCUSSION

The pilot contends that since the aircraft will be used in aerial applications of pesticides and fertilizers, no additional licensing is necessary because he will be spraying his own crops. He contends that such use would qualify the aircraft as exempt under 45 IAC 2.2-5-6 (c) (and also IC 6-2.5-5-2), which allows an exemption for property used directly in the direct production of agricultural commodities.

However, according to the Code of Federal Regulations at § 137.11(a) " [n]o person may conduct agricultural aircraft operations without, or in violation of, an agricultural aircraft operator certificate..."

"Agricultural aircraft operation" is defined in 14 CFR § 137.3 as "[t]he operation of an aircraft for the purpose of:"

- (1) dispensing any economic poison
- (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or
- (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation...

The actions planned by the taxpayer clearly fall under the control of the federal regulations. The taxpayer has provided the FAA operational limitations which clearly do not authorize them to spray crops. Also, to the best of the Department's knowledge, the taxpayer does not have the required agricultural aircraft operator certificate. At the time of hearing, the taxpayer was still within the first phase of its operational limitations and bound by several restrictions. Therefore, until the FAA certifies and enables the taxpayer to make agricultural aerial applications, the Department cannot review whether the aircraft, as used, qualifies for the agricultural exemption.

FINDING

The taxpayer's protest is denied. Federal regulations prohibit the taxpayer from being an agricultural aircraft operator until it meets certain criteria for certification. The taxpayer has not yet achieved this status with the aircraft and there is no guarantee that it will. Accordingly, the taxpayer is not entitled to the agricultural exemption from the use tax.

II. Tax Administration - Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent (10%) negligence penalty. The negligence penalty imposed under I.C. 6-8.1-10-2.1(e) may be waived by the Department where reasonable cause for the deficiency has been shown by the taxpayer. Specifically:

The department shall waive the negligence penalty imposed under I.C. 6-8.1-10-2 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(e).

In this situation, the taxpayer purchased the aircraft kit, brought it into the State of Indiana but failed to take any steps to register, pay excise tax, or use tax on the aircraft. The taxpayer only complied with Indiana law after being contacted by the Department. The taxpayer, an Indiana partnership, did not exercise ordinary business care and prudence in this instance. The Department finds that the taxpayer did not establish the necessary reasonable cause to waive the penalty.

FINDING

The taxpayer's protest is denied. The ten percent (10%) negligence penalty will not be waived.